IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4028 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAWANJI PUNJAJI THAKOR PRESIDENT - Petitioner(s)
Versus
SECRETARY KANTIBHAI JETHABHAI MAKWANA & 3 - Respondent(s)

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Appearance :

MR JIVANLAL M PATEL for Petitioner(s) : 1,
MR PRAKASH K JANI for Respondent(s) : 1,
MR JASWANT SHAH, AGP for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/01/2007

ORAL JUDGMENT

Heard learned advocates appearing for the parties.

2. In the present petition, the petitioner

(hereinafter to be referred to as “the petitioner society”) has challenged an order dated 9th June 1997 passed by the Joint Registrar in an appeal filed by respondent No.1 (hereinafter to be referred to as “the respondent society”). The petitioner society also challenges an order dated 15.4.98 passed by the Deputy Secretary (Appeals), Agriculture & Cooperation in exercise of revisional powers.

3. The petitioner society applied for registration to the District Registrar on 30th June 1994. The registration was granted on 3rd August 1994. The petitioner purports to be a cooperative society of land-less labourers belonging to Baxi-Panch community. Respondent society which was already registered by then and is a society of land-less labourers belonging to Scheduled Castes communities was aggrieved by the allotment of land to the petitioner society as well as the registration of the society itself.

4. Along with pursuing the proceedings against allotment of land made in favour of the petitioner society by the said authorities on 17th August 1994, respondent society also first made representation against registration of petitioner society which according to the respondent society was illegal. However, a formal appeal came to be filed only on 27.8.96 before the Joint Registrar. The Joint Registrar

allowed the appeal on 9.6.97 and ordered cancellation of registration of the petitioner society primarily on the ground that the registering authority did not properly scrutinize the application for registration and also that registration was based on misrepresentation of the petitioner society. The petitioner society filed revision application against the said order of the Joint Registrar, which, however, came to be dismissed on 15.4.98. The petitioner society, is therefore, before this Court in the present petition.

5. Apart from the other legal contentions, learned advocate Shri Supehia for Shri Jivanlal Patel for the petitioner society contended that the statute provides for a period of limitation of two months for challenging the registration of a society. He drew my attention to section 153(4) of the Gujarat Cooperative Society Act, 1961. He submitted that the petitioner society had opposed the appeal of the respondent society on several grounds including the ground of delay. The Joint Registrar, however, without considering this objection allowed the appeal on merits even when there was neither any delay condonation application filed nor delay otherwise explained.

6. On the other hand, learned advocate Shri P.K.Jani for the respondent society supported

the orders under challenge. He submitted that the respondent society was pursuing its remedies before several authorities. The society had challenged the allotment of land in favour of the petitioner society and had also made representation against its illegal registration. He, therefore, submitted that this Court in exercise of its discretionary jurisdiction should not entertain the petition since it is held by the authorities below that there was misrepresentation by the petitioner society. He submitted that the society was created only for the purpose of land-grabbing and the real beneficiaries of the society are neither the members belonging to Baxi-Panch community nor are land-less labourers.

7. Learned AGP Shri Jaswant Shah appearing for the State Government supported the orders under challenge and submitted that the petition may be dismissed.

8. Having heard the learned advocates appearing for the parties, I have confined my scrutiny only on the preliminary issue of delay in preferring the appeal and the decision by the appellate authority without going into the question of delay. In this regard, I entirely agree with the learned advocate for the petitioner that when there was a statutory provision for preferring an appeal within certain time limit,

any delay beyond such period had to be explained. The authority could not have entertained the appeal on merits ignoring the question of delay particularly when such an objection was raised by the opponent and no application for condonation of delay was filed by the appellant. Significantly admittedly, independently of filing application for condonation of delay also, the appellant had not made out any grounds for condoning such delay which was otherwise also not insignificant.

9. Considering all these aspects of the matter, the authorities below erred in law in allowing the appeal of the respondent society and rejecting the further revision application of the petitioner society. In that view of the matter, the appellate order dated 9.6.97 as well as the revisional order dated 15.4.98 which are impugned in this petition are required to be and are hereby quashed. I, however, cannot rest the matter here since there are some serious allegations of manipulation and misrepresentation against the petitioner society in seeking registration. In that view of the matter, the proceedings are remanded to the appellate authority i.e. Joint Registrar of Cooperative Societies to enable the respondent society to file delay condonation application explaining the delay. Upon remand, if such application is filed within a period of four

weeks from today, the same shall be decided by the Joint Registrar in accordance with law after giving an opportunity of hearing to the petitioner herein. The question of legality of registration granted in favour of the petitioner society shall be taken up after disposing of the delay condonation application.

10. It may be noted that since the appeal was allowed by the Joint Registrar in the year 1997, the petitioner society has remained without a valid registration since no stay was granted to the petitioner society at any stage. In that view of the matter, even while quashing the impugned orders, it is provided that until such time, the remand proceedings are finally disposed of, which may be done expeditiously, the registration granted in favour of the petitioner society shall remain suspended. With these directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)